

**Testimony of Virgil Welch, Planning and Conservation League
California Performance Review Commission
Resource Conservation and Environmental Protection Recommendations
Fresno State University, September 17, 2004**

My name is Virgil Welch. I am here to make some general comments on the Resources section of the California Performance Review for the Planning and Conservation League. We have provided written testimony for this hearing and will submit additional comments in writing by September 30th.

We believe that a strategic examination of state government is appropriate, and we commend the Administration for undertaking this exercise. We also appreciate the opportunity to testify before the CPR Commission today. However, we have serious concerns about both this process and many, though not all, of the recommendations in the CPR report. I will touch on a few key points in the five minutes that has been allotted to us. Please refer to our written comments for more specific input.

First, we are troubled by the vagueness of many recommendations, the lack of explanation or analysis behind the changes that have been proposed, and the lack of specificity as to how proposed changes would be implemented. The rationale behind many recommendations is completely unclear.

Second, we are concerned that this report was generated through a closed-door process in which industry representatives had easy access and environmental and other public interest groups were excluded. (*See: Chevron played key role in reform plan: company gives big money to governor, by Tom Chorneau, Associated Press*). A cursory review of the sources cited in each section reveals that most recommendations seem to have been made on the basis of fairly limited or one-sided information. For example, timber industry representatives are cited seven times in the endnotes for the forestry section of the CPR report. In contrast, the author of this section of the CPR did not talk to a single environmental group.¹ The systematic exclusion of the views of environmental groups and other public interest groups is a major flaw throughout this report.

Third, we do not believe that this series of hearings will be particularly useful in providing opportunities for a thorough, public vetting of the ideas in this report. The relative paucity of hearings compared to the number of issues in the report, the time limitations of five minutes for panelists and two minutes for other members of the public, the lack of detail and analysis provided in the CPR report itself, and the extremely short time frame provided to us to read and respond to all of this information all detract from the usefulness of these hearings. Nevertheless, we appreciate this opportunity to share our views.

¹ The San Francisco Chronicle quotes the author of the timber recommendations, as saying "I didn't talk to anyone in the environmental field . . . I had a fairly good understanding of the environmental community without having to talk to anyone." (*See: Proposals would fast-track approval of logging, oil refinery construction, SF Chronicle 8.16.04*).

Before we go into detail on individual recommendations, we would like to suggest that this Commission take a step back and look at the bigger picture. Two overarching questions help address both our concerns and our hopes for the California Performance Review.

First, what is the ultimate goal that the CPR is managing towards? And, second, what is the metric that will be used to measure progress toward achieving that goal?

In regard to the first question, if the ultimate management goal is centralization of power in a government that costs less to run, we fear that the capacity of state government to manage complex natural resource issues will be diminished, as will opportunities for public participation. Taking away from the public process will strengthen the lobbying power of special interests while reducing accountability and open government. This would put the quality of California's environment and its spectacular natural resources at serious risk.

If, on the other hand, the management goal is to review the performance of state government and, where necessary, realign state government to more effectively provide programs and services for the people of California, we are interested in being part of that process. Unfortunately, as noted above, there is very little actual "performance review" in this document. With no real analysis of how state agencies are currently performing, there is no basis for recommending changes to improve performance.

The second question to consider concerns the metric that will be used to measure progress toward achieving a management goal? If "success" is measured by money saved and positions cut, without regard to how that affects the performance of government agencies, we believe that the outcome will be detrimental to public health and the environment. If "success" is to be measured by positive environmental outcomes, we face the substantive challenge of defining what those desired outcomes are and establishing a timeframe for when we hope to reach those outcomes. We would be very interested in being involved in this type of content-laden process. Unfortunately, this type of analysis is all but absent from the report.

Based upon what we have seen of the CPR report and its recommendations, the overarching management goal appears to be a dramatic shift from the current, decentralized board and commission structure to a centralized decision making structure along the lines of the federal government. Elimination of boards and commissions centralizes power, replaces board members and commissioners who have expertise and real-world experience with government bureaucrats, and removes opportunities for public participation. In general, we believe that this is the wrong direction to go if the goal is to protect California's environment.

Comments on specific recommendations:

In the time available we are not able to provide comprehensive comments, and certainly cannot cover every aspect of the CPR report pertaining to the environment. In addition, we have limited our comments on certain topics where another environmental group at this hearing is covering those topics in more detail. Thus, the length (or lack thereof) of our comments in certain subject matters is not a sign that those issues are of lesser importance to PCL. That said, we respectfully submit the following specific responses to some recommendations and hope that they will be of assistance to the CPR Commission.

California Environmental Quality Act (CEQA)

RES 19

- *The CPR recommends that the Governor “direct the Resources Agency, or its successor, to adopt draft amendments to the California Environmental Quality act (CEQA) guidelines.”*

The draft amendments to the guidelines are currently going through the public comment process. It would be an extraordinary step for the governor to short-circuit the public review process, especially as it appears that the guidelines are about to be approved. PCL and other environmental groups raised concerns about the draft amendments to the guidelines in our comments. We would oppose the adoption of the draft amendments in circumvention of the public process.

RES 31

- *The CPR recommends that the CEQA Guidelines be amended to provide uniform mitigation standards that would apply to (1) determining the threshold level of impact or damage that must be reached before mitigation is required, and (2) determining the amount of property to be dedicated to mitigation.*

Both of these proposals are likely to violate the statute because CEQA requires that the determination of whether and how much mitigation is required be project-based (Pub. Resources Code, §21081, 21100). In addition, this proposal could violate Constitutional requirements of nexus and rough proportionality of impacts to required mitigation (see *Nollan v. California Coastal Commission*, 483 U.S. 825, and *Dolan v. City of Tigard*, 512 U.S. 374).

- *The CPR recommends that the Resources Agency should establish a registry of available mitigation banks and properties.* We believe that a registry is a good idea, and could facilitate identification and purchase of mitigation properties.

INF – 37

- *The CPR recommends sweeping changes to CEQA in urban areas in order to promote infill development.* While we recognize the importance of infill development, the proposals in the CPR would drastically curtail CEQA review

without eliminating other, more significant barriers to infill or putting policies in place that will effectively foster infill and reduce sprawl. We are very interested in developing a package of policy changes that will growth patterns in California by encouraging infill while protecting agricultural land, open space and important habitat areas. We would consider ideas about modifications to CEQA in infill areas in that context. However, we believe that this recommendation would harm the environment and reduce public participation in urban areas while allowing sprawl to proceed unchecked.

- *The CPR seems to be recommending that projects be exempt from CEQA because a general plan EIR has been completed.* We would oppose that because not enough information is known at the time of the general plan to be able to identify all of the significant environmental impacts of projects.

The CPR recommends repealing the current infill exemption. We would oppose repeal of the current infill exemption, which is narrowly tailored to apply to small infill projects for which environmental impacts are almost certain to be minimal.

The CPR seems to misunderstand the Master EIR process. Lead agencies can currently adopt Master EIR's on general plan amendments. Section 21157(a)(1) specifically authorizes this. The Master EIR sections do not authorize an automatic exemption from further analysis just because a Master EIR has been done. Instead, the project is analyzed and if determined not to be exempt, subject to a negative declaration or mitigated negative declaration, or focused EIR depending on the extent to which it raises issues not addressed in the MEIR.

Forestry:

- *The CPR report recommends transferring the Fire Protection portion of CDF to a new Department of Public Safety and Homeland Security and moving the Resource Management portion of CDF to a new Department of Natural Resources.* We do not support this recommendation. Treating fire suppression strictly as a “disaster response” activity ignores the fundamental connection between resource management (i.e., fuels management) and fires. The agency with responsibility for the ongoing management of forests is best placed to provide fire protection services.
- *The CPR report also calls for the elimination of the Board of Forestry.* We oppose the elimination of the Board of Forestry, which provides an important forum for public participation in decision-making and policy development. It also provides much-needed transparency to the process.

RES 21A

- *The CPR recommends exempting “low consequence” logging operations from*

review, including Christmas tree farms, projects under one acre, projects under three acres when under the jurisdiction of a local land use agency, and non-industrial timber management plans less than 10,000 acres.

This ignores existing exemptions in the Forest Practice Rules, including one for Christmas tree farms (1038(a)). We are particularly disturbed by the suggestion that nonindustrial timber operations less than 10,000 acres (over 15 square miles) should be exempted. Such operations have a high likelihood of significantly impacting the environment and need to receive adequate environmental review.

- *The CPR recommends extending the life of timber harvest plans “in recognition of the need to monitor operations over time and allow a greater opportunity for adaptive management.”* This recommendation raises concern, but is too vague for us to provide much substantive response. We certainly support better monitoring of timber operations. However, the link between longer timber harvest plans and the need for monitoring and adaptive management is unclear. Why couldn’t monitoring be used to inform future logging operations in the watershed instead of longer lasting timber harvest plans? Who would do the monitoring? What would “adaptive management” look like? When would it be required? How would the public participate in decisions about adaptive management?
- *The CPR recommends accepting and approving logging plans drafted pursuant to independent “certification” systems such as the American Tree Farm System and the Sustainable Forest Initiative.* We believe that some certification systems provide valuable information to consumers and may encourage better management of forest resources. However, those cited in the CPR report – the American Tree Farm system and the Sustainable Forestry Initiative – have little environmental credibility.

Regardless of the merits of a particular third party certification system, we believe that it is completely inappropriate for the State to abdicate its regulatory role and rely on any private certification system as a replacement for, or substantial component of, any part of the state regulatory process.

RES 21-B

- *The CPR recommends establishing a new agreement between CDF and the Water Board to ensure that the provisions of SB 810 can operate within the logging review process that existed prior to passage of that bill in 2003.* We oppose any weakening of SB 810. However, we certainly do not object to efforts to improve interagency coordination so long as it is completely consistent with SB 810.
- *The CPR recommends incorporating adaptive management techniques into logging plans to allow changes in operations or mitigations.* We cannot provide feedback on this proposal without more information about how this might work.

Land Acquisition and Conservancies

- *The CPR recommends eliminating five conservancies because they do not represent assets of “statewide significance”.* This comment misunderstands the purpose and value of conservancies, which is to provide a tool for solving site-specific resource conservation issues. Conservancies are more open to the public and responsive to local conditions than a statewide bureaucracy can ever be.
- The recommendation that land acquisition functions be consolidated in the Resources Agency has the advantage of taking the appraisal review and transaction review process out of the Department of General Services and the Public Works Board arena and places it with a conservation oriented agency. However, it is important to separate those control functions from decisionmaking on acquisitions, which should remain with the agency that will be in charge of those lands.

Cultural Heritage

- *The CPR report calls for the elimination of the Historical Resources Commission.* We oppose the elimination of the State Historical Resources Commission. In order to receive federal grants under the Historic Preservation Fund, California must maintain a “national historic places” state review board. The Historical Resources Commission fulfills this function. In 2004, the state received a \$1.2 million grant for statewide, local, and non-profit historic preservation programs. Eliminating the commission would make the state ineligible for receipt of these funds and render the Office of Historic Preservation unable to operate without the expenditure of state general funds.

RES – 25

- *The CPR report recommends streamlining and eliminative duplicative reporting for the Environmental Protection and Resources Agencies.* Reporting requirements that are unnecessarily duplicative should be eliminated. However, this should not come at the cost of reducing public access to important environmental information or documents.

RES – 32

- *The CPR report recommends broadening the use of environmental fee collections to address unmet needs.* In concept, we are supportive of directing funds to programs that will help to address the state’s highest priority environmental needs. However, we have concerns with some of the particular proposals contained in this recommendation. For instance, we are concerned about any changes that would result in funding being diverted from the Smog Check program. This program is designed to address air quality in the state, which is a high priority environmental need. Taking money away from the Smog Check

program would make it even more difficult for the state to address its pressing air quality concerns. We are also concerned that diverting fees from any programs without sufficiently assessing how those programs will continue to effectively operate would be premature.

Additionally, we believe that a discussion about broadening the use of environmental fee collections to address unmet needs should extend beyond the programs outlined in this proposal. For instance, this proposal failed to consider broadening the use of fees currently collected by the state and regional water quality boards for water quality regulation.

RES – 34

- *The CPR report recommends improving the collection of Department of Fish and Game fees for reviewing environmental reports.* We support this recommendation, and believe that improving the fee structure so that it will adequately cover state costs for reviewing environmental reports will save the state money and help ensure that necessary environmental review is carried out.

RES – 35

- *The CPR report recommends increasing efficiency in using existing bond funds for environmental enhancement.* Both acquisition of property in fee title and acquisition of conservation easements are important tools for land conservation in California. We support the idea of exploring fiscally responsible approaches toward resource conservation. However, we would be opposed to any policy that restricts the ability of the state to make resource conservation decisions based primarily upon environmental protection.